

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DARRYL O. BROOKS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 00-055-SLR
)	
ROBERT SNYDER, Warden, and)	
DAVE GARRAGHTY, Warden,)	
)	
Respondents.)	
)	

MEMORANDUM ORDER

I. INTRODUCTION & BACKGROUND

Currently before the court is petitioner Darryl O. Brooks' application for habeas corpus relief filed pursuant to 28 U.S.C. § 2254. (D.I. 2) A grand jury indicted petitioner in November 1995, charging him with one count of delivery of cocaine. On February 14, 1996, petitioner pled guilty to that charge. On the same day, the Superior Court sentenced petitioner to the minimum sentence of 15 years incarceration and one year probation. Petitioner did not appeal his conviction or sentence to the Delaware Supreme Court.

On September 2, 1998, petitioner filed a motion for postconviction relief. Petitioner raised several claims for relief including: (1) the Superior Court lacked subject matter

jurisdiction because petitioner's indictment on the delivery of cocaine charge should have been filed prior to his entering a guilty plea in an earlier, separate charge of possession of cocaine; (2) the conviction on the delivery charge violated the double jeopardy clause; (3) the indictment was defective because it violated the double jeopardy clause and did not have a case number; (4) the arrest warrant was deficient because it was not signed, did not have a complaint number, and did not state that it was issued under Superior Court Criminal Rule 9; (5) the State was guilty of prosecutorial misconduct for numerous reasons; and (6) his counsel was ineffective by (a) concealing the existence of the pending delivery charge when petitioner pled guilty to a separate charge of possession of cocaine in August 1995 and (b) coercing him to enter the guilty plea on the delivery charge. A Superior Court Commissioner recommended that petitioner's postconviction motion be denied as procedurally barred. On April 14, 1999, the Superior Court adopted the Commissioner's report. The Delaware Supreme Court affirmed the Superior Court decision. See Brooks v. State, No. 267, 1999 (Del. Oct. 7, 1999).

Petitioner, in this habeas petition, advances the same claims from his motion for postconviction relief in the

Delaware Supreme Court. Thus, petitioner has exhausted his state remedies.

II. DISCUSSION

On April 24, 1996, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996). AEDPA amended the standards for reviewing state court judgments in § 2254 proceedings. Since petitioner's habeas petition was filed following the enactment of AEDPA, the court will apply the amended standards set forth in AEDPA to petitioner's claims for federal habeas corpus relief. See Lindh v. Murphy, 521 U.S. 320, 326-27 (1997).

AEDPA imposes a one-year statute of limitations on the filing of a federal habeas petition by a state prisoner. See 28 U.S.C. § 2244(d)(1); Miller v. New Jersey State Dep't of Corrections, 145 F.3d 616, 619 n.1 (3d Cir. 1998) (holding that the one-year limitations period set forth in § 2244(d)(1) is a statute of limitations subject to equitable tolling, not a jurisdictional bar). The one-year limitations period begins to run from the latest of:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to

filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Id. AEDPA further provides that the statute of limitations is tolled during the time that a state prisoner is attempting to exhaust his claims in state court. See id. § 2244(d)(2). Section 2244(d)(2) states that, "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." Id. A "properly filed application" under § 2244(d)(2) is a petition "submitted according to the state's procedural requirements, such as the rules governing the time and place of filing." Lovasz v. Vaughn, 134 F.3d 146, 148 (3d Cir. 1998). Such a petition is considered "pending" within the meaning of § 2244(d)(2) during the time a state prisoner is pursuing his state postconviction

remedies, including the time for seeking discretionary review of any court decisions whether or not such review was actually sought. See Swartz v. Meyers, 204 F.3d 417, 424 (3d Cir. 2000).

Because petitioner's guilty plea became final before the effective date of AEDPA, his limitations period for filing a habeas corpus application began to run on April 24, 1996 -- the effective date of AEDPA and the beginning of the one-year grace period for claims arising prior to AEDPA's effective date. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). The Third Circuit has explained that the effect of its ruling in Burns is to "make . . . all other convictions in this circuit otherwise final before the effective date of the AEDPA, April 24, 1996, final on that day for purposes of calculating the limitations period." United States v. Duffus, 174 F.3d 333, 334 (3d Cir. 1999). Petitioner filed his application for habeas corpus relief on January 3, 2000.¹

¹The Third Circuit has held that a pro se prisoner's § 2254 petition is deemed filed for purposes of satisfying § 2244(d)(1) "the moment he delivers it to prison officials for mailing to the district court." Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). In the instant action, petitioner has not presented the court with proof of the date upon which he delivered his application to prison officials for mailing. The petition, however, is dated January 3, 2000, and it was received by the court on January 12, 2000. (D.I. 2) As such, the court finds that petitioner delivered the petition to prison officials sometime between January 3 and January 12,

Thus, petitioner filed his habeas corpus applications well after the end of the limitations period, and his applications for habeas corpus relief are therefore time-barred.

The tolling provisions of § 2244(d)(2) do not save petitioner from the limitations period. Section 2244(d)(2) tolls the one-year period of limitations during the pendency of state postconviction relief proceedings. Since petitioner's conviction became final before the effective date of AEDPA, the statute of limitations with respect to petitioner began to run on April 24, 1996, when AEDPA took effect, and expired one year later on April 23, 1997. Petitioner's first application for postconviction relief was filed on September 2, 1998 - after the expiration of the statute of limitations. Thus, petitioner's time frame to file a habeas petition had expired before he filed any papers that would toll the statute of limitations. Furthermore, the limitations period does not start anew each time a petitioner files a state collateral attack. Gray v. Waters, 26 F. Supp.2d 771, 772 (D. Md. 1998). The court finds the petition

2000. In the absence of proof of the exact date of mailing, the court will treat January 3, 2000 as the filing date. See Murphy v. Snyder, C.A. No. 98-415-JJF, at 4 (D. Del. Mar. 8, 1999) (unpublished opinion).

is untimely.²

III. CONCLUSION

THEREFORE, at Wilmington this 9th day of May 2001;

IT IS ORDERED that:

1. Petitioner's application seeking habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 2) is dismissed and the writ is denied.

2. A certificate of appealability is denied.

United States District Judge

²Given the court's conclusion, petitioner's motion for discovery is denied as moot.